# HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

**Cr. A. No. 564 of 2000**

**Date of Decision: 10.10.2007**

State of H.P. ……. Appellant

Versus

Gian Singh …….. Respondent.

***Coram***:

**The Hon'ble Mr. Justice Sanjay Karol, Judge.**

*Whether approved for reporting? No*

For the appellant : Mr.Ashok Chaudhary Addl. A.G

For the respondent : Mr. B. C. Verma, Advocate vice Mr. Y.P. Sood, Advocate.

**Sanjay Karol, J. (Oral)**

The present appeal arises out of the judgment dated 22.6.2000 passed by the Chief Judicial Magistrate, Shimla, in Criminal Case No. 204/2 of 1995 titled as State v. Gian Singh, acquitting the accused of the charged offence.

As per the case of the prosecution, on the basis of the information received in the Police Station (West), Shimla, on 29.3.1995, ASI Sant Ram (PW-6) along with H.C. Sanjay Kumar & H.C. Duni Chand proceeded to investigate the accident which had taken place on the National Highway No. 21 in between Taradevi and Shoghi, District Shimla, H.P. On preliminary inquiry, it was found that one vehicle D.C.M. Toyota bearing No. HIS-3175 had hit the cyclist Shri Kalu Ram alias Sukh Ram who

died at the spot. Rukka Ext.PW-6/A was sent to the police station on the basis of which FIR Ext.PW-6/B was registered with Police Station, Boileauganj, Shimla under Sections 279 & 304-A IPC. The investigation was carried out and the deceased Kalu Ram was taken to the hospital where his post mortem was conducted and post mortem report Ext.PW-6/E was taken by the Investigating Officer. The inquest report Ext.PW-6/D, site plan Ext.PW-6/C was also obtained/prepared. The photographs Ext.PW-3/A to Ext.PW-3/E were taken and the vehicle was also got mechanically examined vide mechanical report Ext.PW-2/A.

Notice of accusation under section 304-A was put to the accused, to which he did not plead guilty and claimed trial. The prosecution examined six witnesses and statement of the accused u/s 313 Cr.PC was also recorded.

The Court below, acquitted the accused of the charged offence for the reasons that there was no evidence to convict the accused as none had seen the occurrence of the accident resulting into the death of deceased Kalu Ram.

I have examined the record as also the statements of the witnesses.

Site plan Ext.PW-6/C and the photographs Ext.PW-3/A to Ext.PW-3/E would show that the accused was driving the vehicle on the left side of the road whereas the body of the deceased cyclist is lying on the wrong side of the road. The absence of skid marks would only prove that the accused was not driving his vehicle rashly and negligently.

Shri Kalu Ram s/o Shri Dhani Ram (PW-1) is the father of deceased Kalu Ram alias Sukh Ram. Shri Puran Chand (PW-2) has mechanically examined the vehicle. LHC Santosh Kumar (PW-3) has testified the photographs. Shri Khem Raj (PW-4) is the owner of the vehicle who has been declared hostile. Constable Karam Chand (PW-5) is the sole independent witness on whose testimony the case of the prosecution rests. S.I. Sant Ram (PW-6) is the Investigating Officer.

PW-1 is not an eye witness and has only stated that after reaching the spot, he learnt that his son had met with an accident and the vehicle was being driven by the accused. He has admitted that at the time when the accident must have happened it would have been raining and there must have been fog.

PW-2 has also not deposed anything against the accused or that there was any mechanical defect in the vehicle. PW-4 has been declared hostile and in his cross-examination carried out by the prosecution, there is nothing to establish the guilt of the accused. PW-6 is the Investigating Officer and is also not an eye witness.

PW-5, therefore, is the only witness whose testimony needs to be examined to consider the guilt of the accused. In his examination-in-chief, he has deposed that he was the Gunman of the Deputy Commissioner, Solan and was

going along with the Deputy Commissioner from Shimla to Solan and while reaching a place called Sonu Bungalow, he noticed a dead body lying on the road and ahead of that there was a vehicle No. HIS-3175 plying towards Shoghi which is on way to Solan from Shimla. He signaled the driver of the vehicle to stop and at that the driver of the vehicle parked the vehicle on the side and thereafter both he and the conductor ran away from the spot. He has deposed that the accident took place due to rash and negligent driving of the said vehicle. Importantly, this witness does not testify the accused to be the driver to whom he had signaled to stop the vehicle. He has also not seen the occurrence of the accident. He has stated that he had seen the dead body lying on the road. That the vehicle was being driven by the accused at the relevant time, in itself cannot be a ground for holding the accused guilty of act causing death of the deceased. On mere suspicion there can be no conviction.

The material on record, including the depositions of the witnesses have been correctly appreciated by the Court below while arriving at its conclusion. There is no perversity in the same. I see no reason to interfere with the judgment passed by the Court below and the appeal is accordingly dismissed. The bail bonds are discharged.

**( Sanjay Karol ),**
**Judge.**

**October 10, 2007**
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